IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 571 OF 2005

Bhiwandi Nizampur City Municipal
Corporation, Bhiwandi & Anr. ...Petitioners

Versus

Sanjay Mahadeo Rathod & Ors. ...Respondents

ALONGWITH
WRIT PETITION NO. 572 OF 2005

Bhiwandi Nizampur City Municipal
Corporation, Bhiwandi & Anr. ...Petitioners

Versus

Jayawant Vishnu Suryavanshi & Ors. ...Respondents

.....

Mr. Nitin Jamdas, counsel for Petitioners

Mr. P.P. Chavan with Mr.V.M.Bhate counsel for Respondents.

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CORAM: B. H. MARLAPALLE, J.
DATED: 30TH MARCH, 2005

P. C.:-

1. Heard Mr. Jamdar, the learned counsel for the petitioner-Municipal Corporation.

2. Both these petitions challenge the common order passed by the Labour Court at Thane in complaint (ULP) No. 146 and 148 of 2004 and subsequently confirmed by the Industrial Court at Thane in Revision Application (ULP) No. 71 and 72 of 2004. The order of the Labour Court has decided an application for interim relief filed U/sec. 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971 alongwith the main complaint filed U/sec. 28 r.w. Item 1 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

3. It appears that at the direction of the State Government and in keeping with its policy of reservations for the backward classes, the Corporation was required to undertake selection process to fill in the backlog of backward class reservations in class III and IV i.e. "C" and "D" posts and accordingly the Corporation administration invited the list of eligible candidates from the Employment Exchange and integrated Adivasi Development Project at Shahapur. The candidates interviewed by the Selection Committee duly constituted as per Section 54 of the Bombay Provincial Municipal Corporation Act, 1949 (for short "The Municipal Corporation Act"). The selected candidates were issued appointment orders by the Administration and appointees had reported for duty. Subsequently, the complaints

were filed with the State Government alleging that the appointments suffered from several irregularities and in addition the appointments were made inspite of the fact that the General Body had refused to grant approval to these appointments. Being alarmed by these complaints, the State Government directed an enquiry but before that the State Government had called upon the Corporation Administration vide its letter dated 2.2.2004 to discontinue the candidates who had not been sponsored by recognized agencies like Employment Exchange or Integrated Adivasi Development Project at Shahapur. These directions were perhaps not followed and therefore, the Government ordered and enquiry and acordingly the enquiry report was submitted. The main thrust of the enquiry report is on the alleged breach of Section 53 of the Municipal Corporations Act inasmuch as the appointments could not have been issued unless the General Body had approved the list of selected candidates. However, notwithstanding this report there was a meeting between the Government and the Corporation Administration in Mantralaya and thereafter the Government directed by its letter dated 8.7.2004 to discontinue all those appointees whose names were not sponsored by the recognized agencies. Pursuant to these directions, the Municipal Administration issued termination orders and these terminated employees approached the Labour Court. In the first complaint i.e. complaint (ULP) No. 146 of 2004 in all 178

complainants have joined and in the second complaint i.e. complaint (ULP) No. 148 of 2004 67 complainants have joined. They have mainly alleged that by the time the termination orders were issued, they had completed 240 days of service in the preceding 12 months and while issuing the termination orders, the mandatory requirements of Section 25(F) of the Industrial Disputes Act, 1947 were not followed and therefore, this was an act of illegal retrenchment thereby warranting reinstatement in service.

4. The learned Judge of the Labour Court has considered the rival contentions including allegations that the appointments were made in breach of the provisions of section 53 of the Municipal Corporations Act and held that prima facie, there was a case made out of Unfair Labour Practice and balance was in favour of the complainants and therefore, granted reinstatement, pending the main complaint. This view of the Labour Court has been confirmed by the Industrial Court and more so by examining the scheme of Sections 53, 54 and 453 of the Municipal Corporations Act. Both the courts below noted that the complainants were sponsored by the recognized agencies and none of them were from the agencies which were objected to in the enquiry report. They were appointed against the available vacancies to fill in the backlog of backward classes and the appointments were preceded

by a due selection process made by the Selection committee constituted U/sec. 54 of the Municipal Corporations Act. The Courts below also noted that in the meeting between the representatives of the State Government and the Corporation Administration it was decided to discontinue only those appointees whose names were not sponsored by the recognized agencies notwithstanding the enquiry report submitted and all these complainants do not fall in these excluded categories. It has also been held by the Labour Court that pirma facie the complainants had put in 240 days of work before the termination orders were issued and hence the orders were issued without following the due process of law.

5. Mr. Jamdar, the learned counsel for the Corporation relied on the decisions in the cases of Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and Anr. [1994 (69) F.L.R. 695 (SC)] and A. Umarani Vs. Registrar, Cooperative Societies & Ors. [(2004) 7 SCC 112], in support of his contentions that the appointments were made in breach of the requirements of Section 53 of the Municipal Corporations Act and, therefore, the appointments so made void were ab initio. He also placed reliance on the decision in the case of The Delhi Cloth and General Mills Co. Vs. Shri Rameshwar Dayal & Anr. (AIR 1961 SC 689), in support of his contentions that the relief of

reinstatement being final or full relief, it could not have been granted by way of interim relief on an application filed U/sec. 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971.

6 It is well settled by a catena of decisions after examining the scheme U/sec. 30(2) of the M.R.T.U. and P.U.L.P. Act, 1971 that an application for interim relief can be allowed if the prima facie case of unfair labour practice is made out and on the basis of the balance of convenience being in favour of the complainants. In the instant case, the termination order issued by the Municipal Administration sets out specific reasons for termination. It would be advantageous to reproduce the termination order dated 8.7.2004 in its verbatim addressed to the complainants individually.

ज.क्रं.आस्था/994

भिवंडी नि.शहर महानगरपालिका
दिनांक : 8/7/2004

वाचा:- 1. या कार्यालयाकडील जा.क्रं.आस्था/582 दिनांक 28/5/2003 चे नियुक्ती आदेश।.
2. शासनाकडील पत्र क्रमांक भिनिपा-2002/4680/प्र.क्र.223/03 नवि-23 दिनांक 8 जुले, 2004

आदेश।

श्री/श्रीम. वनिता धोडू कडाळी यांना वरील संदर्भ क्रमांक 1 अन्वये

लिपिक या पदावर नियुक्ती देण्यात आली होती. परंतु शासनाने आपल्या नेमणुकीबाबत पूर्ण चौकशी करून आपली नेमणुक संदर्भ कमांक 2 अन्वये बेकायदेशीर ठरविली आहे. त्यामुळे शासनाचे प्राप्त निर्देश व आपल्या नेमणुकीच्या आदेशातील अट कमांक 1 नुसार आपणांस दिनांक 9 जुलै, 2004 पासुन भिवंडी निजामपुर शहर महानगरपालिका सेवेतून कमी करण्यात येत आहे. आपण आपल्या कडील कार्यभार व महानगरपालिकेच्या चिजवस्तु संबंधीत विभागप्रमुखांच्या ताब्यात घाव्यात.

स्वाक्षरीत

मा. आयुक्त सो. उप-आयुक्त ;मुख्यालयद्ध

यांच्या मान्यतेने भिवंडी निजामपुर शहर महानगरपालिका, भिवंडी

प्रत :

1. लेखा विभाग
2. आस्थापना विभाग
3. प्रभाग समिती कार्यालय क. 5

7. The above termination order does not give the reason that the appointments were made without approval of the General Body as required U/sec. 53 of the Municipal Corporations Act. Lastly it is also important to note that the order passed by the State Government

on 8.7.2004 was stayed by the Government itself subsequently by its order dated 17.7.2004 and thus, the very foundation of the termination order was directed to be kept in abeyance.

8. The Municipal Commissioner had placed the list of selected candidates before the General Body for its approval as required U/sec. 53 of the Municipal Corporations Act may be perhaps ex-post facto and the same was considered by the General Body in its meeting held on 23.9.2003 and Resolution No. 66 passed on that day, reads as under:-

महासभा क्र. 66 : दिनांक 23-9-2003

महानगरपालिका प्रशासनाने मुंबई प्रांतीक महानगरपालिका अधिनियम 1949 चे कलक्र 53 च्या तरतुदीचे उल्लंघन करून महासभेस विश्वासात न घेता कर्मचारी नियुक्त केले आणि नंतर तीन महिन्यांनी सदर विषय मंजुरीसाठी महासभेसमोर आणलेला आहे. त्यासंबंधी वर्तमान पत्रात माहिती प्रसिध्द केली नाही. निवड मंडळाने शहापुर प्रकल्प व सेवा नियोजन ठाणे येथून मागविलेली यादी उवलोकनार्थ सादर केली नव्हती. तसेच सदर उमेदवारांचे जातीचे दाखले व जात पडताळणी अहवाल महासभेत ठेवला नाही. निवड मंडळाने कायदेशिर कुठलीही मान्यता न घेता महासभेची मंजुरी न घेता

नोकर भरती केली आहे. सबब शासनाकडील आदेशानुसार मागासवर्गीयांचा अनुशेष भरून काढणेकामी विविध पदावर केलेल्या कर्मचा-यांच्या नियुक्तीस महासभेची मंजुरी मिळणेबाबतचा प्रशासनाने सादर केलेला प्रस्ताव हि सभा नामंजुर करीत आहे.

सुचकाचे नांव : श्री. काठवले प्रभाकर गोपाल सुचकाची सही

अनुमोदकाचे नांव : श्री. जगताप मधुकर संभाजी अनुमोदकाची सही

ठराव सर्वानुमते मंजुर

टावरे सुरेश काशिनाथ

महापौर तथा पिठासिन अधिकारी
महासभा
भिवंडी निजामपुर शहर महानगरपालिका

. The above resolution gives the following reasons for not granting approval;-

a. The appointments were made in violation of Section 53 and approval was sought after three months from the date of appointment orders;

b. Advertisement was not issued in the newspapers;

c. The Selection Committee did not place before the General Body the list of the candidates whose names were sponsored by the Employment Exchange at Thane and Integrated Adivasi Development Project at Shahapur;

d. The caste certificates as well as the cast verification certificates of the selected candidates were not placed before the General Body; and

e. The Selection Committee had proceeded to appoint the candidates without sanction and approval from the General Body.

9. Even in the enquiry report submitted to the State Government it has been observed that the appointments were sought to be made against the vacancies available for the backward classes quota. The complainants were undoubtedly the candidates who have been sponsored by the recognised agencies and failure to publish the

advertisements cannot be a reason to hold the complainants as illegal appointees, when the appointments are being made to fill in the backlog. It is nobody's case that none of the complainants are ineligible on account of age, qualifications and other requirements for the respective posts and as noted earlier, they have been appointed after they have undergone due selection process. However, it is clarified that all these appointments shall be subject to verification of the respective caste claims under the Act framed by the State Government in that regard. All these aspects have been duly considered by both the courts below and therefore,the concurrent findings recorded by both the courts below cannot be termed as perverse or manifestly erroneous so as to cause interference by exercising supervisory powers under Article 227 of the Constitution. Hence, the challenge to the impugned orders is devoid of merits and the petitions fail.

10. The petitions are hereby rejected summarily.